

an increase in estimated cost or fee for cost-reimbursement contracts.

Defect means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Design and manufacturing requirements means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

Major system means a system or major subsystem used directly by the Department of Homeland Security (DHS) to carry out its mission(s), as defined by HSAM Chapter 1234, Major Acquisition Policies and Procedures (for dollar threshold applicable to U.S. Coast Guard, See Coast Guard guidance at (HSAR) 48 CFR 3046.701-90). The term does not include:

(1) Related support equipment, such as ground-handling equipment, training devices and accessories thereto, unless a cost effective warranty for the system would require inclusion of such items; or

(2) Commercial items sold in substantial quantities to the general public as described in (FAR) 48 CFR part 2.

Performance requirements means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

3046.703 Criteria for use of warranties.

(a) *Major Systems.* The use of warranties in the procurement of major systems by the USCG is mandatory, unless waived (see USCG guidance at (HSAR) 48 CFR 3046.792). Other OEs may use the procedures in USCG guidance in this part as a guideline for major systems acquisitions.

3046.705 Limitations.

(a) The following restrictions are applicable to DHS contracts:

(1) The USCG is required to include a warranty in cost reimbursement contracts for the production of major systems acquisitions.

(2) Any warranty on major system acquisitions shall not apply in the case

of any system or component thereof which has been furnished by the Government to a contractor except as indicated in the USCG guidance at (HSAR) 48 CFR 3046.791-3.

(3) Any warranty obtained shall specifically exclude coverage of damage in time of war or national emergency.

3046.706 Warranty terms and conditions.

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to:

(i) An identified revision of a top-level drawing; and/or

(ii) An identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (*e.g.*, delivery, acceptance, in-service date), the ending of the warranty (*e.g.*, passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (*e.g.*, extending

the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause shall contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receives credit for any payments where equipment failure is covered by warranty provisions.

3046.790 Additional USCG definitions (USCG).

For the USCG, in accordance with Public Law 99-190, the dollar threshold as it pertains to the inclusion of a warranty in major systems acquisitions is \$10 million.

3046.791 Use of warranties in major systems acquisitions by the USCG (USCG).

This subpart provides the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

3046.791-1 Policy (USCG).

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (HSAR) 48 CFR 3046.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

3046.791-2 Tailoring warranty terms and conditions (USCG).

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk,